HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 166 of 2005 (S/S)
Jai Shankar Prasad

Vs

State of Uttaranchal & others.

Approved for reporting.

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Not approved for reporting

Date of decision 19.5.2005

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition no. 166 of 2005 (SS)

Jai Shankar Prasad ..... Petitioner

Versus

1. State of Uttaranchal
2. Additional Secretary, Social and Women Welfare Uttaranchal, Dehradun
3. Director, Department of Social Welfare Uttaranchal, Haldwani
4. District Probation Officer, Udham Singh Nagar
5. Nodal Officer, Women Welfare, Uttaranchal Dehradun ..... Respondents

Sri R. Thapliyal, Advocate for the petitioner
Standing Counsel for the respondents.

Dated:19.5.2005

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties.

By the present writ petition the petitioner has prayed for a writ of certiorari quashing the order dated 11.10.2004 passed by the Additional Secretary, so far as it relates to the petitioner.

Briefly stated, the petitioner was appointed as Care Taker in the respondents' establishment vide order dated 19.09.2003, under Dying in Harness Rules as his father late Sri Om Prakash Yadav was posted as a Care Taker in the Respondents' department at Rajkiya Samprakshan Graha, Udham Singh Nagar, who died during harness on 15.6.2002. The petitioner has submitted that his services were terminated vide order dated 11.10.2004 in which a reference of the letter of the Chief Secretary/Commissioner dated 27.9.2004 was given and it has

been mentioned in the order that the services of the petitioner were no more required.

The learned counsel for the petitioner has submitted that once the petitioner was appointed under Dying in Harness Rules, his services cannot be terminated as of a temporary Governments servant. He referred Rule 5 of U.P. Recruitment of Dependants of Government Servants Dying in harness Rules 1974, which provides as under:

In case a Government servant dies in harness after the commencement of these rules and the spouse of the deceased Government servant is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central Government or a State Government shall on making an application for the purposes, be given a suitable employment in Government service on a post except the post which is within the purview of the Uttar Pradesh Public Service commission, in relaxation of the normal recruitment rules.

The counsel for the petitioner has referred the case of Ravi Karan Singh vs. State of U.P. and others, 1991 (3) UPLBEC 2263, where a Division Bench of Allahabad High Court after relying upon the case of Budhi Sagar Dubey v. D.I.O.S. (1993) 1 UPLBEC 197, Gulab Yadav b. State of U.P. & others (1991) 2 UPLBEC 995 and Dhirendra Pratap Singh vs. D.I.O.S. & others (1991) 1 UPLBEC 427, has held that the appointment under dying in Harness rules has to be treated as a permanent

appointment otherwise it will follow that soon after the appointment the service can be terminated and this will nullify the very purpose of the Dying in Harness Rule.

It is well established that appointment under Dying in Harness Rules is always made in order to help the family of an employee from distress who died in harness.

The petitioner has placed reliance on the Apex Court's judgment in the case of Smt. Shushama Gosai and others vs. Union of India and others, 1989 (4) SCC, 468, wherein Apex court has held as under:

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family."

The impugned order by which the services of the petitioner were terminated shows that no opportunity was given to the petitioner at all to defend his cause. A perusal of the order further shows that it does not indicate any rule which allegedly has been violated by giving appointment to the petitioner. The order impugned, therefore, suffers gross illegality and cannot be sustained.

Accordingly the writ petition is allowed and the impugned order dated 11.10.2004 is hereby quashed. No order as to costs.

Rajesh Tandon J.

19.5.2005
*Dhyani